

Proposed Regulatory Changes to Title 23 Waters

Amend §120(a)(5) Levees.

Existing § 120(a)(5)

The applicant shall provide the board with a permanent easement granting the Sacramento and San Joaquin Drainage District all flood control rights upon, over, and across the property to be occupied by the proposed flood control works. The easement must include the area within the proposed floodway, the levee section, and the area at least ten (10) feet in width adjacent to the landward levee toe if the area is not presently encumbered by a board easement. The board may require an easement over a larger area and over any property when it is foreseeable that the proposed activities subject to a permit would be injurious to or interfere with the adopted plan of flood control

This language is added to allow the board to require any easement that is necessary to regulate the flood control interest of the Board in accordance with Title 23. Under this change, easements may be required for maintenance, flowage, excavation or other reasons to the extent such easements are necessary to prevent the proposed activities subject to a permit from resulting in an effect that is injurious to or interferes with the adopted plan of flood control. The board may require the applicant to obtain easements over property the applicant may not own.

Add new § 138. Identification of Limits of Flood Control Works

§ 138 Identification of Limits of Flood Control Works.

(a) The board may identify the limits of the adopted plan of flood control or flood control works for purposes of establishing the area within the Board's jurisdiction that it actively regulates when:

1. The existing levee toe has become unidentifiable due to erosion or the placement of fill material into, onto, or adjacent to the existing levee.
2. Features or facilities necessary to the functioning of flood control are proposed to be added that may interfere with the integrity or proper functioning of the adopted plan of flood control.
3. The point of intersection of the levee slope and natural ground cannot readily be determined, therefore, the existing levee toe cannot otherwise be defined in accordance with Title 23 Cal Code Regs. Section 4(s).

(b) Where the board defines the limits of the flood control project works pursuant to this section, the applicant shall provide the board with all necessary easements for the defined area described in section 138(1).

This section is added to give the board the ability to define the limits of the Board's regulatory interest for the purposes of determining the easement area when necessary in accordance with the Board's jurisdiction described in Section 8710 of the Water Code and Title 23. For example, Section 138(a)(1) would likely address a situation where an applicant requests permissions from the Board to tie into a levee regulated by the board by means of the placement of fill, such as with the River Island's project. Section 138(2) would address the situation in which the board must define the easement for purposes of installation of a pump or other flood features or facilities necessary to improve the functioning of the flood control system. Section 138(3) would likely address situations in which the placement of dredge or other material has obscured or buried the original intersection of the project levee with the natural ground, such as on the west bank of the Sacramento River adjacent to the city of West Sacramento.